LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT

Notification No. LAW 76 LCA 75

Bangalore, dated 12th September 1975.

Ordered that the Employees' State Insurance (Amendment) Act, 1975 (38 of 1975), published in Part II. Section I of the *Gazette of India* Extraordinary dated 1st August 1975 be republished in the *Karnataka Gazette* for general information.

By Order and in the name of the Governor of Karnataka,

B. NAGESHA RAO,

Under Secretary to Government,

29 *Dept. of Law and Parliamentary Affairs.*

Assented to on 1st August 1975 Act No. 38 of 1975

THE EMPLOYEES' STATE INSURANCE (AMENDMENT) ACT, 1975.

An

ACT

further to amend the Employees' State Insurance Act, 1948, and to incorporate an explanatory provision connected therewith in section 405 of the Indian Penal Code.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows :—

1. Short title and commencement.—(*1*) This Act may be called the Employees' State Insurance (Amendment) Act, 1975.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

2. Amendment of section 2.—In section 2 of the Employees' State Insurance Act, 1948 (34 of 1948) (hereinafter referred to as the principal Act), in sub-clause (*b*) of clause (9) for the words "five hundred rupees" in both the places where they occur, the words "one thousand rupees" shall be substituted.

3. Amendment of section 17.—In sub-section (1) of section 17 of the principal Act, for the words "with a maximum monthly salary of five hundred rupees and above", the words "the maximum monthly salary of which exceeds one thousand and two hundred rupees" shall be substituted.

4 Amendment of section 85.—In section 85 of the principal Act, for the words "he shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both," the following shall be substituted, namely:—

"he shall be punishable.—

(*i*) where he commits an offence under clause (*a*), with imprisonment for a term which may extend to six months but–

(*a*) which shall not be less than three months, in case of failure to pay the employees' contribution which has been deducted by him from the employee's wages;

(*b*) which shall not be less than one month, in any other case,

and shall also be liable to fine which may extend to two thousand rupees;

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment;

(*ii*) where he commits an offence under any of the clauses *b*) to *g*) (both inclusive), with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

5. **Insertion of new sections 85A, 85B and 85C.**— After section 85 of the principal Act, the following section shall be inserted, namely :—

Enhanced punishment in certain cases after previous conviction.—"85A. Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both :

Provided that where such subsequent offence is for failure by the employer to pay any contribution which under this Act he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to one year but which shall not be less than three months and shall also be liable to fine which may extend to four thousand rupees.

Power to recover damages.—85B. (*1*) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer such damages not exceeding the amount of arrears as it may think fit to impose :

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard.

(*2*) Any damages recoverable under sub-section (1) may be recovered as an arrear of land revenue.

85C. Power of court to make orders.—(*1*) Where an employer is convicted of an offence for failure to pay any contribution payable under this Act, the court may, in

addition to awarding any punishment, by order, in writing require him within a period specified in the order (which the court may if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount, of contribution in respect of which the offence was committed.

(2) Where an order is made under sub-section (1), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the court, but if, on the expiry of such period or extended period, as the case may be, the order of the court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punishable with imprisonment in respect thereof under section 85 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with".

6. **Insertion of new section 93A.**—After section 93 of the principal Act, the following section shall be inserted, namely:—

"**Liability in case of transfer of establishment.**—93A Where an employer, in relation to a factory or establishment, transfers that factory or establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer".

7. **Amendment of section 95.**—In section 95 of the principal Act, in sub-section (4) for the words "or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following"

the words "or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid" shall be substituted.

8. Amendment of the First Schedule.—In the First Schedule to the principal Act, in paragraph 3, for the Table, the following Table shall be substituted, namely:—

"TABLE

Group of employees whose average daily wages are	Employee's weekly contribution (recoverable from employees)	Employer's weekly contribution	Total weekly contribution (employee's and employer's contribution)	Corresponding daily standard benefit rate
1	2	3	4	5
	Paise	Paise	Paise	Paise
1. Below Rs. 2	Nil	75	75	100
2. Rs. 2 and above but below Rs. 3	40	80	120	130
3. Rs. 3 and above but below Rs. 4	50	100	150	175
4. Rs. 4 and above but below Rs. 6	70	140	210	250
5. Rs. 6 and above but below Rs. 8	95	190	285	350
6. Rs. 8 and above but below Rs. 12	125	250	375	500
7. Rs. 12 and above but below Rs. 16	175	350	525	700
8. Rs. 16 and above but below Rs. 24	275	550	825	1000
9. Rs. 24 and above	375	750	1125	1500"

9. Amendment of Act 45 of 1860.—In section 405 of the Indian Penal Code, the *Explanation* shall be numbered as *Explanation 1* thereof and after the *Explanation* as so numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation 2*:—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948, (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

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